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Attorneys for Nugget Construction Co., Inc.,
and USF&G, Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

UNITED STATES OF AMERICA for the)
use of NORTH STAR TERMINAL &)
STEVEDORE COMPANY, d/b/a NORTHERN)
STEVEDORING & HANDLING, and NORTH)
STAR TERMINAL & STEVEDORE COMPANY,)
d/b/a Northern Stevedoring &)
Handling, on its own behalf,)

No. A98-009 CIV (HRH)

Plaintiffs,)

and)

UNITED STATES OF AMERICA for the)
use of SHORESIDE PETROLEUM, INC.,)
d/b/a Marathon Fuel Service, and)
SHORESIDE PETROLEUM, INC., d/b/a)
Marathon Fuel Service, on its own)
behalf,)

Intervening Plaintiffs,)
and)

METCO, INC.,)

Intervening Plaintiff,)

vs.)

NUGGET CONSTRUCTION, INC.; SPENCER)
ROCK PRODUCTS, INC.; UNITED)
STATES FIDELITY AND GUARANTY)
COMPANY; and ROBERT A. LAPORE,)

Defendants.)

NUGGET'S MOTION FOR LEAVE
TO TAKE VIDEO DEPOSITION
OF LYNN "RANDY" RANDOLPH
TO PERPETUATE TESTIMONY

1 INTRODUCTION

2 Nugget Construction Company ("Nugget") moves the court for an order granting Nugget
 3 leave to take a perpetuation video deposition of Lynn "Randy" Randolph sometime during either
 4 the week of July 15, 2007 or August 12, 2007, due to his unavailability for trial.

5 BACKGROUND

6 Mr. Randolph was the project manager for Nugget on the project that is the subject of
 7 this litigation. As such, it is expected that he will be a necessary witness for all parties during
 8 trial. However, Mr. Randolph is currently working as the project construction and design
 9 manager, engineer of record, and sealift manager for Chugach Industries Inc. on the
 10 construction of a new fuel storage and Airfield Operations facility on Midway Atoll. Randolph
 11 AFF. ¶ 2. To construction the project, Chugach must ship from California nine, 50,000 gallon,
 12 secondary containment tanks, associated pump modules and controls, fuel on load structure,
 13 barge offload equipment, piping, berms, and tank protection. *Id.*

14 The storage tanks and other materials were originally scheduled for delivery to Midway
 15 in June 2007, but due to the recent funding issues in Congress, the delivery was pushed back
 16 until late August 2007. The materials are now scheduled for arrival on August 27, 2007. This
 17 date could be subject to slight modification depending on the travel time of the tug and barge,
 18 weather, etc. *Id.* at ¶ 3.

19 As the project manager for Chugach, and due to the logistical issues involved with
 20 unloading the barge once it arrives, it is imperative that Mr. Randolph be present in Midway
 21 while the materials are offloaded. Each of the storage tanks is 80' x 14' x 14' in size and weighs
 22 50 tons. The unloading of the tanks is a difficult and risky process. There is no one else who
 23 can do this work if he is unavailable. *Id.* at 4.

24 To prepare for the arrival of the barge, Mr. Randolph must be in Midway at least two
 25 days before it gets there. The unloading of the barge is expected to take approximately five

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1 days, if the weather is calm. Unloading the tanks will be slowed significantly if there are high
2 winds. *Id.* at 5.

3 There is no commercial air service to Midway. Access to the atoll is through intermittent
4 charter service. The first flight Mr. Randolph would be able to return on is currently scheduled
5 to leave Midway on September 7, 2007. If Mr. Randolph is able to complete the unloading of
6 the barge before that date, a special charter could be arranged. However, the cost of that single
7 flight is \$28,000. *Id.* at 6.

8 Because of the nature of the Midway project, Mr. Randolph has limited time available
9 between now and the middle of September. Mr. Randolph is available to have his deposition
10 taken for perpetuation purposes during the weeks of July 15 and August 12, 2007. *Id.* at 7.

11 **ARGUMENT**

12 Unfortunately, the delivery of critical materials for a project being built on Midway Atoll by
13 Chugach Industries precludes Mr. Randolph from being in Alaska during the dates scheduled
14 for trial in this matter. This conflict was not known until recently, because the materials being
15 delivered to Midway were to be there long before the scheduled trial date. Although Mr.
16 Randolph was an important part of Nugget's team on the Homer Spit Project, he is not, and
17 never has been, a Nugget employee. Thus, Nugget does not have control over Mr. Randolph or
18 his schedule. Mr. Randolph is, however, cooperative and willing to make himself available for a
19 deposition to perpetuate his testimony for trial.

20 As discovery has long since closed in this matter and because Mr. Randolph's
21 deposition has already been taken (twice) in this matter, Nugget asks the Court for permission
22 to schedule and take Mr. Randolph's perpetuation deposition via video recording sometime
23 during the week of either July 15, 2007 or August 12, 2007. Mr. Randolph is available only
24 during these weeks due to the commitments he has to Chugach on the Midway project.

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2 Dated: June 8, 2007
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2007, a true and correct copy of the foregoing was served electronically on:

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By: /s/ Thomas R. Krider

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